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1951

File No. Town Plan II
51 (N)

Legal Deptt.

B BRANCH

Subject:— Notifications issued under the Bombay Town Planning Act, 195—

P-3
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File No. Town Plan II /51 (N)

Gen. 194

149-B

Office of the R.L.A.

The power conferred on the Government under section 43(3) of the Bombay Town Planning Act, 1915, is a quaisjudicial power. Before arriving at a decision under that section, it would be necessary to give to the party affected an opportunity of being heard. The fact that such opportunity was given will have to be brought out in the decision.

The Government decision will have to be embodied in the form of a Resolution after the above procedure is followed and the Government has taken the decision.

Id/- J.R.D.
6/11

Remembrancer of Legal Affairs.

U.R. to L.S.D. &.P.H.E. No. 17639,
dated the7th November 1951.

JPE.27/6/56.4c.

Office of the R.L.A.

It is specifically provided in sub-section (2) of section15 of the Bombay Town Planning Act, 1915, that a person shall be entitled to compensation in respect of a building or work begun or a cotract entered into before the date on which the local authority published a declaration of intention to make a scheme and only in so far as such building of work is proceeded at the time of the publisation of the declaration of intention to make a scheme. It means that he is not entitled to any compenaation in respect of a building or work begun and not falling under sub-section (2) after the date on which the local authority published a decalration of intention to make a scheme. Under clause (b) of sub-section (1) of section 15 of the Act the local authority may either grant or refuse a commencement certificate, or grant it subject to such condition as the local authority may, with the previous approval of the State Government, think fit to impose. The Municipal Commissioner has now approached the State Government to give approval to a commencement certificate subject to the condition to the effect that no compensation shall be claimable by or payable to the applicant or any persons interested in the said premises in respect of any building erected or work carried out by vittue of the permission hereby granted and the said premises shall for the purposes of any claim for

compensation, whether under the Land Acquisition Act, 1894, or the Bombay Town Planning Act, 1915, be treated as if the building or work in respect of which perxmission is granted by the certificate had not been erected or carried out, and the premises had remained in the same state and condition in which they were on the date of the publication of the declaration of intention to make a Town Planning Scheme, Under clause (b) of sab-section (1) of section 15 of the Act the local authority have got full power to forbid any further building activity within the area included in the schme, If however in consideration of the applicant agreeing not to claim compensation in reppect of the structure or premises to be contructed by him under the commencement certificate, the local authority grants him permission to erect or construct such premises, he would not be justified arguing that he is being deprived of the property without compensation. A similar question was considered by the .R.L.A. in his opinion No.2201 dated the 20th March 1946 and it was held by the R.R.A. that this is not a case of expropriation by law and the provisions of section 299 of the Constitution Act are not attracted by it. Article 31 of the Constitution of India corresponds to section 299 of the Government of India Act and the same opinion would hold good in this case also.

Id/- J.R.D.
13/12

Remembrancer of Legal Affairs.

.R. to L.S.G. & P.H.D.No.19946,

dated the 12th December 1951.

JPE.28/6/56.4c.